

Unregulated Democracy and Campaign Finance Reform

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Campaign finance reform has been a central topic of public and political debate for the last five years. The purpose of this paper is to understand three separate perspectives on this issue. First, the judicial perspective is outlined to understand what sorts of arguments and debates the Supreme Court is dealing with in ruling on essential cases such as Citizens United v. F.E.C. Secondly, the issue of campaign finance is analyzed as an issue for democratic theory. Democratic theories not only enrich an understanding of the Supreme Court's rationales, but also offer alternative forms of democracy from the liberal-democratic prescriptions of the Court. Lastly, a survey of the empirical political science research which has been done dealing with these questions in order to understand the implications of the Supreme Court's decisions.

1. Introduction

Government regulation of political contributions and expenditures is an issue which has received increased focus in the past five years in American politics. This is due in large part to controversial decisions on issues related to campaign finance legislation handed down by the Supreme Court of the United States. The public debate on campaign finance reform has centered on these decisions, particularly highlighting the Court's role in deregulating the system in face of legislative attempts to limit both contributions to political campaigns as well as expenditures made by various political organizations during an election. Decisions such as *Citizen's United v. F.E.C.* (2010) and the more recent *McCutcheon v. F.E.C.* (2014) have sparked popular interest in the news media and political discussions over the role of money in the American political system. Despite the quite recent interest in these issues however, these two decisions are merely the latest in a longstanding dialogue in Court opinions between two opposing viewpoints on the legitimacy and role of campaign finance regulation in the United States.

The research presented here attempts to bring together three separate, yet related perspectives on the question of campaign finance reform in the United States. Since much of the popular interest surrounding the issue is rooted in the recent Supreme Court cases, the first question dealt with is a judicial one. The question asks what sorts of debates and legal precedents have led the Court to a generally conservative stance on campaign finance reform. Court decisions are extensively analyzed in an attempt to answer this question. Stemming from the judicial question, a second research question is posed dealing with democratic theory. This perspective centers on longstanding debate in democratic theory as to the legitimacy of prioritizing freedom of political speech over political equality. The hope is that a theoretical perspective may supply a broader context with which to view the role of campaign finance in democracies. Finally, there is an empirical question of the effects of the Court's decisions on American democracy. While there is a large debate about the effects of campaign donations and expenditures on electoral or legislative outcomes, the empirical section will be comprised of a literature review and as well as suggestions for future directions in empirical research.

2. Survey of Supreme Court Cases

The last forty years of U.S. Supreme Court jurisprudence in cases involving campaign finance regulation have exemplified a trend of deregulation, though the Court has never been unanimous in its position on such regulations. Since the decision in *Buckley v. Valeo* (1976) the Court has struggled between two opposing views of campaign finance reform. Generally speaking the Court has reacted to legislative attempts to reform the campaign finance system by striking down many regulations in such legislation. The Court's monumental decision in *Buckley* to adopt an absolute view of the First Amendment rights at play, together with the narrow definition of corruption the Court used to justify any infringement of these rights has limited the discussion and possibilities for reform since. While there are exceptions to this deregulating trend in such decisions as *Austin v. Michigan Chamber of Commerce* (1990) and *McConnell v. F.E.C.* (2008), the majority on the Court have taken a conservative view of the constitutional and practical issues at hand, especially in the most recent decisions. The Court's self-imposed restrictions laid out in *Buckley* have led to the monumental decisions in *Citizens United* and *McCutcheon*.

Analysis of this trend through the Court's opinions shows that the decisive issue at hand is whether or not government regulation of campaign expenditures or contributions is justifiable given the burden on First Amendment freedoms such regulations entail. Such burdens are viewed as the limitation of restricting the amount of political speech a person may spend money on, and the limitations of freedom of association by limiting how many campaigns an individual may contribute too as well as how much money a contribution may be. The more conservative judges ruling on these cases have stated that such encroachments on First Amendment freedoms are largely unjustifiable in constitutional terms, given the competing interests offered by the government: combating corruption, and "equalizing the playing field" of political participation and expression. In opposition to this view, the more liberal judges have countered that such regulations are justifiable given these legitimate governmental interests aimed at maintaining the integrity of the electoral process.

Embedded in this larger issue of constitutionality is the more focused debate over whether or not powerful interests with a larger capacity to spend money on politics does or does not undermine

the integrity of the political process. Empirical answers to this are difficult to find, as the third section of this paper will explain. However, the Supreme Court has also delved into an important legal debate over what a proper legal definition of corruption is. In other words, the Court has asked what actually constitutes an undermining of the political process. To a large degree, the future of campaign finance in the United States hinges on the popular definition among justices. As the following summary of case history will show, the Court is largely divided on this issue.

2.1 *Buckley v. Valeo* (1976)

The Court's divide between conservative and liberal points of view on the issue of campaign finance regulation began in 1976 with the case of *Buckley v. Valeo*. This case challenged large portions of the Federal Election Campaign Act of 1974 (F.E.C.A.) This legislation put in place broad restrictions on campaign contributions and expenditures, mandated disclosure of contributions and expenditures according to different types of political organizations, and established the Federal Election Commission to implement and monitor these regulations. Two aspects of how the majority in this ruling handled the case are important to understanding the differences between the two viewpoints. First, the majority rejected the government's rationale that regulations were justified because they served to level the playing field of political influence within society by diminishing the capacity of large interests to spend far larger sums of money on political campaigns. Second, the Court made the important and lasting distinction between how campaign *contributions* and campaign *expenditures* were viewed in terms of constitutional protection.

Rejection of the so called "equalization rationale" offered by the government suggests that the majority did not believe any such equalization would be necessary to uphold the integrity of the electoral process. When weighed against the protection of First Amendment freedoms the Court could not even view the case from an equalization perspective, stating "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment..." (*Buckley v. Valeo*, 1976). The Court did find that the government had a legitimate interest in regulating campaign finance in the name of guarding against the reality or appearance of *quid pro quo* corruption, however this is drastically different than the equalization rationale. The *Buckley* Court found that the only regulation necessary to uphold the integrity of the electoral process would be regulation of criminal bribery or its appearance. Outside of such blatant acts of corruption, the Court believed that the electoral process would function properly to represent the public, so long as first amendment freedoms were protected absolutely. Thus the Court established the precedent that government regulation of campaign finance may only seek to be justified in terms of combating the reality or appearance of *quid pro quo* corruption.

From the perspective that only corruption could be targeted by regulation, the majority identified a difference between separate views for campaign contributions and campaign expenditures. Two distinguishing aspects of campaign contributions and expenditures led to differential treatment of these two types of regulations. First, contributions were seen as more susceptible to becoming *quid pro quo* corruption, since the contribution limits applied to the giving of money directly to a candidate for federal office or authorized campaign committees. Secondly, expenditures were viewed as more direct political speech, thus afforded more protection under

the First Amendment than contribution limitations. While contributions were viewed more as associational freedoms, the Court argued that the “expenditure ceilings impose direct and substantial restraints on the quantity of political speech.” Here another precedent was set, namely that political expenditures must be afforded more protection under the First Amendment. This precedent opened an important door for interest group, eventually allowing them to organize and spend virtually unlimited sums of money with which to advocate directly for candidates and issues.

The Court did keep in place many of the provisions of the FECA. Contribution limitations were upheld given their special role in preventing *quid pro quo* corruption. Much of the disclosure provisions along with the establishment of the F.E.C. to collect such disclosures remained law. Subsidizing of Presidential candidates’ campaigns by the Federal government given specific requirements was allowed. Nonetheless, for the reasons given above, the Court struck down expenditure limitations, the effects of which are felt in American electoral politics to this very day. Additionally, what the Court said in its opinion may be even more helpful than *Buckley’s* effect on legislation in understanding the Court’s role in shaping the Campaign Finance market.

Rejection of the equalization rationale and the standard of combating *quid pro quo* corruption for justifying governmental regulation are perhaps the most important aspects of *Buckley’s* legacy on United States politics. It is clear that this legacy has framed the conversation between judiciaries, legislatures, and citizens about the legitimate role of campaign finance regulation in the United States. There has been substantial discussion in the opinions issued post-*Buckley* and onward questioning the legitimacy and relevancy of the precedent. In a number of cases between 1990 and the present, the Court’s rulings have debated broadening the conception of corruption that *Buckley* established. During the same time period, the Court also debated the role of independent corporate expenditures in United States electoral politics, as well as the possibility for banning or regulating said expenditures.

2.2 Possibilities for Broader Definitions of Corruption

In the case of *Austin v. Michigan Chamber of Commerce* (1990) the Court took a significant step away from *Buckley’s* handling of campaign expenditures. Dealing with Michigan campaign law, the Court upheld a provision which banned independent corporate expenditures on state and local races. Ultimately, the Court in *Austin* allowed regulation of a separate form of corruption than *quid pro quo*. This separate form of corruption can be defined as “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas” (*Austin v. Michigan Chamber of Commerce*, 1990). The appellants in the case, the Michigan Chamber of Commerce wished to make direct expenditures on local and state races within Michigan and wished to finance their endeavors using money from general funds rather than from an account set up specifically for such political expenditures, a point Michigan state law dictated. The majority in *Austin* saw direct expenditures from a corporations general funds as an example of “corporate form... that have little or no correlation to the public’s support for the corporation’s political ideas.”

Given the broader definition of corruption allowed for in *Austin*, the Court let the Michigan law stand. While the definition employed in *Austin* was dictated by the fact that the funds in question were gathered through the corporate form, it still raised questions about the *Buckley*'s definition of corruption. Interests supported by large aggregations of wealth accumulated through the corporate form were seen as less representative of a public's support for such interest's political ideas. The door appeared to be opened for the Court to reconsider the implications of the *quid pro quo* definition of corruption outside of solely the realm of corporate expenditures.

Discussion of reevaluating *Buckley* on the grounds of the legitimacy of the *quid pro quo* definition has been voiced by dissenting opinions since *Austin*. Even if the rejection of the "equalization rationale" established in *Buckley* is accepted, broadening the definition of corruption to include proposed negative effects that large aggregations of wealth may have on the electoral process could be a way to attack the same problems the equalization rationale seeks to rectify, though the Court's views on expenditure limits may not be so easily dealt with by expanding the definition of corruption. This is largely due to the majority's rationale in *Buckley* that expenditure limits pose a more direct threat to political expression. The cases *Randall v. Sorrell* (2006) and *McCutcheon v. F.E.C.* demonstrate the dialogue between these opposing views of the definition of corruption.

Randall v. Sorrell ruled on the constitutionality of Vermont campaign finance regulations. The important aspect of the Vermont statute in question was the exceptionally low limits that the state placed on both expenditures and contributions, indeed some of the lowest in United States history. Contribution limits were set at \$200 to \$400 dollars to candidates per election cycle. Expenditure limits were set at \$300,000 dollars for gubernatorial candidates, and \$2,000 dollars for candidates to the state legislature. In contrast to Federal statutes, individuals can contribute up to \$2,100 dollars per congressional or presidential candidate, and since *Buckley* there are no expenditure limitations. The Court struck down the expenditure limitations, relying on *Buckley*'s precedent. As for the contribution limits, the majority eliminated them claiming that the limitations on contributions are not closely drawn enough to justify the First Amendment burdens they entail.

The state offered an interest of combating the rising costs of elections as justification for its low limitations. While the dissent recognizes that this particular issue was not dealt with in *Buckley*, Justice Stevens claims that the *Buckley* precedent implies that such an interest would not be justified. It is conceivable that a broader definition of corruption could include the more general trend of unprecedented amounts of money being spent on all sorts of federal election campaigns, and Justice Stevens states in the dissent that, "I am convinced that *Buckley*'s holding on expenditure limits is wrong, and the time has come to overrule it" (*Randall v. Sorrell*, 2006). This statement shows the willingness of some of those on the Court to reevaluate *Buckley*'s definition of corruption to include those aspects of how campaigns are financed that could have a distorting effect on the electoral process outside of instances of *quid pro quo* corruption specifically.

2.3 Recent Cases

The two most recent cases being studied were handed down in the last five years, and represent a dramatic shift towards even broader deregulation of the campaign finance system. *Citizens United v. F.E.C.* dealt with restrictions on independent corporate expenditures, similar to the issue at hand in *Austin*. The controversial decision struck down many of these restrictions, allowing independent corporate entities such as Super PAC's to raise and spend unlimited sums of money on political campaign ads. So long as the outside interest does not coordinate with the campaign of the candidate they may be promoting, the majority did not find any reason they should view these corporate interests differently from individual's protections under the First Amendment. *McCutcheon v. F.E.C.* dealt with aggregate contribution limits laid out in the Bipartisan Campaign Reform Act of 2003 (B.C.R.A.) The Court did not find that aggregate limits on the number of campaigns an individual may contribute to helped serve the government issue in preventing *quid pro quo* corruption, given the individual contribution limits in place.

These two cases distinguish themselves from the preceding campaign finance jurisprudence in two important ways. First, these two cases have at least partly gone against precedent set in a number of cases since *Buckley*. In *Citizens* the Court struck down portions of the Bipartisan Campaign Reform Act (2002) pertaining to independent corporate expenditures. These statutes were federal restrictions very similar to the Michigan state law upheld in *Austin*. *McCutcheon* overturned precedents pertaining to aggregate contribution limits dating back to *Buckley* as well as the case *McCutcheon v. F.E.C.* Secondly, both of these cases carry broad and distinctive implications for the campaign finance market. The decision in *Citizens* was extremely controversial, and a focus for the public debate surrounding campaign finance reform. This was due partly to the scope of the decision. Countless different groups were "freed" by the *Citizens* broad decision, in the sense that they could now raise and spend unlimited sums of money on political ads in federal election campaigns. *McCutcheon's* decision struck down aggregate contribution limits, allowing wealthy individuals to contribute to as many federal candidates and political party committees as they wish.

In the controversial decision handed down in *Citizens United v. F.E.C.* the Court overturned the precedent established by *Austin* in reference to bans on direct corporate expenditures by a 5-4 vote along ideological lines. The majority viewed the proposed regulation of direct corporate expenditures as limiting First Amendment rights in terms of a speaker's identity, and claims such restrictions are unconstitutional under the First Amendment. There is much debate between the majority and minority in *Citizens United* as to the legitimacy of this claim. The dissent recognizes, "Yet in a variety of contexts, we have held that speech can be regulated differentially on account of the speaker's identity, when identity is understood in categorical or institutional terms" (*Citizens United v. F.E.C.*, 2010). The question of corporate identity was undoubtedly understood in such terms in the decision of *Austin*, and the Court believed speakers of a corporate identity posed more of a potential to unduly influence the electoral process.

In *McCutcheon v. F.E.C.* (2014), a case dealing with aggregate contribution limits laid out in the Bipartisan Campaign Reform Act (2002), the dissenting opinion cites a breed of corruption in which a few individuals gain undue influence over elected officials through large campaign contributions. This definition is obviously at odds with the majority's *quid pro quo* definition of corruption in *McCutcheon*. Justice Breyer concluded in his dissent however, that a recognition of a subtler form of corruption is necessary to protect the legitimacy of the electoral process. This

form of corruption, it is argued, involves a breakdown of “the constitutionally necessary ‘chain of communication’ between the people and their representatives” (*McCutcheon v. F.E.C.*, 2014). Acknowledgement of the risk of “undue influence”, a problem the majority denies to be defensible justification for regulation, is the relevant distinction between either sides of the debates in both *McCutcheon* and *Randall* over a definition of corruption.

The rationales of the majority in both of these cases relied upon a strong view of the First Amendment, and a *quid pro quo* definition of corruption. Together these two views of the issue link the majority to a strong liberal-democratic tradition in democratic theory. This view of democracy values the protection of political rights such as freedom of speech and association as essential to facilitation of the democratic process. So long as everyone has the formal right to speak, the voice of the public will be heard. The decisions and precedents of the majority rely upon such liberal-democratic conceptions of democracy. Delving further into the democratic theories that the Court cases are based upon will help view the question of campaign finance legislation and the judicial debate associated with it in a broader context.

3. Democratic Theory

In the article entitled “Free Speech, Political Equality, and Campaign Finance Reform: A Paradox for Democracy?”, Tom De Luca poses the issue of campaign finance reform and the Supreme Court jurisprudence exemplifying this debate as an effort to negotiate a tension between democratic ideals of freedom of speech and political equality. “Democracy requires both speech free from governmental interference and government regulation of political resources- for the sake of democratic equity- including those necessary for political speech” (De Luca, 2007, p. 145). The debate over campaign finance reform epitomizes this fundamental “paradox” of democratic theory. Specifically, the question which divides those on the Court and those theorizing about democracy is which side of the paradox should constitutional priority be given? While some argue that absolute protection of the right to express political opinions is necessary for a fully functioning democracy, others argue that equal distribution of resources necessary for political speech must be mandated for the ideals of democracy to be fulfilled.

3.1 Liberal-Democratic Position

As the preceding analysis proves to show, some on the Court subscribe to a view of liberal-democracy which calls for absolute protection of rights within a frame work of democratic institutions. These grounds are justified by arguments of the fundamental value of such human rights as freedom of conscience and the unregulated ability to voice one’s opinions. However, a second justification of absolute protection of First Amendment rights from the liberal-democratic perspective is one based on the democratic utility of such freedoms. In *Buckely*, the majority stated the First Amendment was designed “to secure the ‘widest possible dissemination of information of diverse and antagonistic sources’ and ‘to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people’” (*Buckley v. Valeo*, 1976). From this view, the First Amendment facilitates government action in response to the wishes of the public.

These ideas were formerly laid out by such thinkers as J.S. Mill, who is considered the starting point for many modern liberal-democrats. Mill believed not only that the protection of rights was an important normative question, but also that protecting them would facilitate the work of a democracy. The best way to understand what the public wants is to guarantee the individual full right to voice their opinions. This sort of reasoning is at the heart of the conservative opinions on the Court when ruling on campaign finance legislation. Government cannot regulate the expression of political opinions through campaign expenditures and contributions, unless blatantly criminal acts are discovered which could potentially ruin the integrity of the democratic process. The only permissible example of such corruption is *quid pro quo*, the most drastic and literal form of corruption which could be observed. Anything short of this, they fear, is not only contrary to the ideals embedded in the Bill of Rights, but also would hinder the democratic process at large

There are sound theoretical reasons to believe that protecting such First Amendment rights does help achieve the goal of democratic forms of government, which is people exercising power over themselves and at their discretion. Government must not regulate the expression of people's political opinions, it is argued, because of the legitimate threat that a government granted such power could use it to systematically regulate opposition opinions to the ruling party, or overemphasize the popularity of certain opinions held by the public. But there are also theoretical problems associated with unregulated political speech within the liberal-democratic tradition itself.

One reason that Mill and other liberal-democrats believe that the freedom of opinion and conscience must be protected absolutely is because, generally speaking, one's personal opinions and beliefs pose little if any risk to negatively affecting or harming others in society. Indeed, a central tenet of liberal-democratic thought is that the only justification for government intrusion on personal freedoms is to protect others in society who may be harmed by another individual exercising their freedoms. But as both sides of the debate on the Court have acknowledged, there is significant differences between speech made between individuals in private, and political speech made in the public sphere. The question then becomes, for both the Court and democratic theory, is there anything about the utility of political speech which may dictate a separate treatment from other forms of expression?

Noted liberal-democratic thinker John Rawls discusses many of the issues associated with weighing free political speech against equal political speech voiced by the dissenting opinions in the more recent cases. Rawls draws an important distinction between formally equal basic liberties, such as the formal protection of certain rights by a constitution, and basic liberties which have equal *value* for those exercising them. He goes on to argue that in the case of the basic right of political speech, they must be guaranteed equal value, primarily because all other rights depend on one's ability to influence government. Rawls deals specifically with the equalization rationale offered in *Buckley* as an attempt by the government to guarantee fair value (1993, p. 360) an attempt the Court did not endorse at large. However, the dissent in recent cases is closely aligned to the sorts of views Rawls holds. As De Luca asks, if the Court believes that the First Amendment is aimed at achieving political and social change, how could the liberal-democrat view on the Court "depreciate so easily the equalization goal, given the empirical realities of social and economic inequality in political participation?" (2007, p.149). It is

precisely these sorts of inequalities which Rawls and the dissent would argue must be taken into account to guarantee the equal value of political liberties, and for a liberal-democracy to function properly.

The practical logic of the liberal-democrat standpoint emphasizing the need for protecting rights is reminiscent of the *McCutcheon* dissent's idea of a "constitutionally necessary 'chain of communication' between the people and their representatives (2014)." Again, the dissent argued in *McCutcheon* that allowing those wealthier individuals within in society unregulated opportunities to affect the results of elections results in a specific form of corruption. The chain of communication is distorted by this practice, or in the dissent's words there is a "breakdown". Preventing such distortions of the democratic process was surely the aim of Rawls' provision for political rights being of equal value. For both the dissent and Rawls, the utility of First Amendment rights does not simply rest in their mere absolute protection. These rights only ensure the democratic process if they are equally enough distributed among citizens such that their being exercised has an equal likelihood of affecting government action for each citizen or group of citizens. An acceptable model of liberal-democracy, from these perspectives, may actually require more than simply the protection of First Amendment rights.

3.2 Challenges to Liberal-Democratic Position

Much of the world of democratic theory is positioned to address problems associated with liberal-democracy. Not surprisingly, most of these opposing theories deal with lifting some emphasis in theory from the *liberal* component and placing it instead on the *democratic* component of liberal-democracy. The value of democracy, many theorists argue, rests not in its ability to protect some sort of fundamental human rights, but rather in the functioning of the democratic process itself and the interactions it generates between members of society. Two prominent theories focused on the value of the democratic process itself for a society are participatory and deliberative democracy.

Examples of liberal-democratic theory often view the democratic process as simply the means through which the public picks its representatives. The acts of governing and actual policy decision making is reserved for those representatives so chosen, and direct influence over the making of those decisions typically left to those involved in organized interest groups. Participatory democrats view this definition of the democratic process as far too narrow. They emphasize the importance of utilizing direct citizen participation in decision making where ever possible. Generally beginning in localized arenas such as neighborhoods and city governments, participatory theorists believe direct decision making not only exemplifies the abstract ideals of democracy, but provides an even more pure representation of the public's interests than simply safe-guarding formal political rights.

They argue further that the process of participating in direct democratic decision making helps develop a collective awareness and solidarity among the people within a society, harkening to forms of civic republicanism premised on the same ideas of community action. Another interesting feature of such theories is that the coercive powers of government usually placed in an executive are purely administrative in an ideal participatory system. Authorities draw their power directly from the will of the people and their decisions of where common public interests

lie. In terms of campaign finance debates, it is easy to see that those endorsing participatory democracy would view the subtle form of corruption alluded to by the recent dissenting opinions on the Court as self-imposed difficulties for liberal-democracy and its preference for voting and representation.

Deliberative democratic theory views a democratic system as legitimate to the extent that it promotes public deliberation on particular political issues *as well as* the very rules and institutions which facilitate deliberation. While many liberal-democrats view the democratic system as one which aggregates citizens fixed preferences and desires, deliberative theorists believe that a more realistic view of individuals in the democratic game understands individuals' preferences to not be fixed. In fact, many such theorists believe that deliberation should actually lead to a collectively realized consensus of the common good. Liberal-democrats such as Rawls have rejected such a normative conception of the role of the democratic process for fear that governments may seek to indoctrinate specific values into a society.

Many deliberative theorists disagree about what sorts of conceptions of a common good may arise from a democratic deliberation, or even what sorts of conceptions may be normatively appropriate. They do nonetheless agree that a sincere democratic system should seek to legitimate political institutions by encouraging citizens to seek a consensus, rather than offering alternative arguments from a fixed preferences perspective. In cases such as *Buckley* and *Citizens United* the majority uses a liberal conception of democracy to protect an individual's right to freely express their political views. Deliberative theorists would find fault in the decisions of the Court in that they do not go far enough to encourage people to come to any sort of consensus, the most valuable aspect of democracy for such theorists.

Perhaps the most important problem for liberal-democracy in reference to the tension between political liberties such as free speech and political equality is the charge that liberal democracy masks oppression. Democratic theorists who favor a liberal component to democracy tend to prescribe certain formal institutions and procedures to ensure specified liberties, such as freedom of speech. According to Cunningham (2002, p. 71) the primary problem with these formal institutions, and the liberal democracies which enshrine them, is that they block efforts to reverse systematic oppression by limiting the scope of what is appropriate for government regulation to a narrow public realm. Similar to the way Rawls sought to ensure equal value of political liberties, the dissenters on the Court may favor an equalization rationale for regulating campaign finance. But, as the majority has concluded in numerous cases, the formal restrictions on government intervention outlined in the Constitution and interpreted in precedents laid out by the Court largely rule out the option of seeking strictly equalization in campaign finance law.

4. Empirical Study

It is difficult to pin point the differences in campaign finance before and after the issuing of the more recent decisions. One reason for this is that there simply hasn't been enough time for serious changes in the ways that politicians and other groups raise or spend money to manifest themselves. Another reason is that it is difficult to empirically understand how a Court decision will affect the incentives and behaviors of certain actors. In other words, it is difficult to prove that the rise in outside spending on political campaigns has occurred *because* of the *Citizens*

United decision was issued. Nonetheless, there is a considerable amount of literature dealing with how both contributions and expenditures affect both electoral and legislative outcomes.

4.1 Literature Review

The review is organized according to discussion of the empirical issues relevant to the decisions in *Citizens United* and *McCutcheon*. First, research is reviewed which deals with the effects of expenditure bans for corporations and labor unions on election outcomes. There is no argument that outside spending on federal elections has increased dramatically since 2010. However, it is vital to understanding the importance of *Citizens United* to figure out if these groups' large spending is actually leading to their own favorable electoral outcomes. Multiple theories have been developed to explain where corporations may be expected to have the greatest impact on electoral outcomes. Brunell (2005) claims that corporate and labor interests have reasons to favor a specific party's expected legislation, and thus often contribute where it may be put to the best use for a specific political party. A second strand of research suggests that these sorts of groups are more likely to contribute to incumbents, rather than challengers, in order to gain access to candidates likely to remain in office.

Given these considerations, corporations and labor unions post-*Citizens United* would be expected to spend large amounts of money on specific candidates depending on the political party or electoral prospects. However, it is not clear whether or not corporate and labor union expenditures result in electoral success for the candidates they prefer. The past research studying campaign spending and election outcomes concluded that that increasingly high levels of campaign spending has a diminishing return in terms of electoral success (Levitt, 1994; La Raja & Schaffner, 2014). If the type of expenditures in question in *Citizens United* do affect electoral outcomes, it would be possible to see the differences when comparing electoral systems that work with corporate expenditure bans and those that do not. La Raja & Schaffner (2014) applied this sort of analysis to state elections, comparing elections in different states over time that had expenditure bans to those that did not. They concluded from this analysis that expenditure bans appear to have limited effects on electoral outcomes in states (La Raja & Schaffner, 2014).

If it is true, as much of this research suggests, that campaign spending has little effect on elections, then there may be support for the narrower definition of corruption. Since election spending does not affect election outcomes in a substantial way, the First Amendment rights in question must prevail over the governments' meaningless restrictions. Though there is still evidence supporting some of the dissents claims that a broader definition of corruption is justified given the distorting effects of money. Powell (2013) draws from analysis of every state legislative chamber in the United States, and determined that differing institutional design and political realities lead to differing levels of influence contributions may have on policy choices. Ambitions of some members for higher office, salaries paid to legislators, and size of constituencies were a few of the factors that determined the level of influence political contributions have on legislative policy. This research bears specific relevance to understanding the effects of the *McCutcheon* decision. As wealthy donors are allowed to donate to as many candidates, they have an increased pool of policy makers they may influence.

4.2 Future Directions

Coupled with the preceding considerations from Court case analysis and democratic theory, the most interesting direction for future research the empirical literature brings out is understanding the ramifications of the *McCutcheon* decision on future elections and legislators. The cases of institutional and political conditions in which contributions had the greatest chance of influencing legislative policy in Powell (2013) may not be conclusive. Furthermore, while many researchers focus on state elections and legislatures for purposes of comparison, there is not similar research dealing with contributions and influence at the federal level. The door has been opened for groups known as joint fundraising committees (JFC's) to raise exceptionally large contributions from wealthy individuals following the *McCutcheon* decision.

JFC's are organizations of federal and state candidates and party committees, which raise donations together and distribute the funds amongst the participants in the JFC. Following *McCutcheon*, these organizations may open new doors for individuals and corporate entities to contribute to as many campaigns as they wish. JFC's may become tools which facilitate large scale political contributions directly to numerous candidates and party committees. Understanding their developing role in future elections may shed another light on the Court's decision to strike down the aggregate contribution limits.

5. Conclusions

It is clear from the analysis of the Court's decisions and dialogue through the recent case history dealing with campaign finance that there is no consensus among justices as to how to interpret the issue of campaign finance reform. Nonetheless, there is no question that the aggregate of their views represented by the votes on each of the decisions has exemplified a trend towards deregulation. On the question of constitutionality of regulation attempts, the Court has claimed that they must be weighed against the most robust of First Amendment political rights. Given this consideration, the Court has established the *quid pro quo* definition of corruption as being the only form justifiably regulated by the government. This move is controversial not only in the public at large, but among those on the Court as well. Future prospects for campaign finance reform, in terms of expected Court challenges, appear dismal. Short of a constitutional amendment, some scholars and activists such as Lawrence Lessig have suggested that the only way to confront this issue outside of the Courts is through a change in American political culture and the incentives of candidates running for office. But incumbent advantage and vested interests in federal elections pose problems for this avenue as well. However, the judicial question must not be disregarded. The Court has a serious and real effect on the system of campaign finance in the United States, and their decisions may yet view the issues in a different light. Overruling precedents set out in *Buckley* may be a bold expectation of the current Supreme Court, but broader definitions of corruption may allow the Court to make serious changes to the campaign finance system nonetheless.

Such a solution may be easily endorsed by participatory democrats from a theoretical perspective. The Court's position of absolute First Amendment freedoms exemplifies a strong liberal-democratic view of campaign finance. The dissent is far from holding theoretical perspectives similar to participatory or deliberative theory, partly due to their dependence on the

Constitution and precedent for legal reasoning. Rawls' notion of fair value of political liberties however does seem to be extremely similar to the dissent's arguments for an equalization rationale or a broader definition of corruption. This makes sense given the fact that Rawls' argues from within the liberal-democratic framework, as the dissent is forced to do as well. There is no question that these opposing views of democracy do hold some weight in discussions of campaign finance reform. Particularly, these perspectives can help attain an understanding of what should be valued in American democracy. The tension between free speech and political equality is exemplified by these theories outside the realm of American political discussion, and it is essential to properly viewing the issue of campaign finance to take these theories into account.

Regardless of the theoretical justifications for the Supreme Court's decisions, there is also an important question of empirically observable trends and effects of deregulated democracy on the electoral process. Specifically, these questions of the influence political spending has on electoral or legislative outcomes is important to framing arguments for a broader definition of corruption. However, there does not seem to be a substantial consensus on the effects of campaign donations or expenditures in the outcomes of the political process. It does appear to be true that increased spending does not make a difference after a certain amount has been spent on the campaign, giving some weight to the arguments made by the majority in cases like *Citizens United*. However, evidence of contributors' influence over elected officials under certain conditions in state legislators has not been applied directly to the United States legislative bodies, and such an analysis may offer empirical support to a broader definition of corruption.

Popular discussion of the issue of campaign finance reform typically paints the Supreme Court as a political actor overstepping its bounds and substantially ruining the integrity of the electoral process. This paper attempts to show the inherent complexity in the Court's decisions on campaign finance reform, and indeed the complexity of the issue of campaign finance in general for democracy. Beginning with the legal question of the Supreme Court's own rationale and precedents, it is easy to see that the Court's decisions rely on both theoretical conceptions of democracy and some sort of intuition about how politics works in the real world. From the perspective of political science, it may be more fruitful to understand the empirical nature of influence in the newly deregulated campaign finance market. Thus far, the research has been inconclusive giving justification to many arguments as to the constitutional priority of protecting First Amendment rights over a risk of corruption which has not been proven. With the handing down of the *McCutcheon* decision and new avenues for political contributors to affect elections, new research avenues are also opened up which may shed more light on this issue over time.

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